

James H. Billingsley
HUGHES & LUCE, L.L.P.
1717 Main Street
2800 Bank One Center
Dallas, Texas 75201
(214) 939-5500
ATTORNEYS FOR HIGHLANDER
TOWNGATE, LTD.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:
:
In re : **Chapter 11**
:
:
:
RANDALL'S ISLAND FAMILY : **Case Nos. 00-41065**
:
GOLF CENTERS, INC., et al. : **Through 00-41196 (SMB)**
:
:
:
Debtors.
-----X

CONDITIONAL OBJECTION TO MOTION FOR ORDERS PURSUANT TO SECTIONS 105, 363, 365 AND 1146 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 6007 (I) (A) AUTHORIZING AND APPROVING (i) SALE OF CERTAIN FEE-OWNED PROPERTIES, (ii) ASSUMPTION, SALE AND ASSIGNMENT OF CERTAIN LEASEHOLD INTERESTS, AND (iii) SALE OF RELATED PERSONAL PROPERTY, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX, (B) APPROVING CERTAIN SALE PROCEDURES TO BE USED IN CONNECTION WITH SUCH SALES, (C) APPROVING THE FORM OF SALE AND ASSIGNMENT AGREEMENTS, (D) AUTHORIZING THE PAYMENT OF BROKERS; FEES IN CONNECTION WITH SUCH SALES, (II) IN THE EVENT THAT PROPERTIES REMAIN UNSOLD AT THE CONCLUSION OF THE OMNIBUS SALE HEARING, AUTHORIZING AND APPROVING THE ABANDONMENT OF UNSOLD FEE-OWNED PROPERTIES AND THE REJECTION OF UNSOLD LEASEHOLD INTERESTS, AND (III) SCHEDULING AN EXPEDITED HEARING TO CONSIDER SHORTENING THE TIME FOR, FIXING THE DATE, TIME AND PLACE FOR, AND APPROVING THE FORM AND MANNER OF NOTICE OF THE HEARING ON SUCH SALES

Highlander Towngate, Ltd., through its co-counsel, Hughes & Luce, LLP and Blank Rome Tenzer Greenblatt LLP, files this conditional objection to the Debtors' Motion for Orders Pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6007 (I) (A) Authorizing and Approving (I) Sale of Certain Fee-Owned Properties, (ii) Assumption, Sale and Assignment of Certain Leasehold Interests, and (iii) Sale of Related Personal Property, Free and Clear of Liens, Claims, Encumbrances, and Interests and Exempt From Any Stamp, Transfer, Recording or Similar Tax, (B) Approving Certain Sale Procedures to Be Used in Connection With Such Sales, (C) Approving the Form of Sale and Assignment Agreements, (D) Authorizing the Payment of Brokers; Fees in Connection With Such Sales, (II) In the Event That Properties Remain Unsold at the Conclusion of the Omnibus Sale Hearing, Authorizing and Approving the Abandonment of Unsold Fee-Owned Properties and the Rejection of Unsold Leasehold Interests, and (III) Scheduling an Expedited Hearing to Consider Shortening the Time for, Fixing the Date, Time and Place for, and Approving the Form and Manner of Notice of the Hearing on Such Sales (the "Motion").

BACKGROUND

1. On September 13, 1996, Highlander Towngate, Ltd. ("Highlander") entered into a lease (the "Lease") with Golden Bear Golf Centers, Inc. covering both real and personal property located at 22255 Eucalyptus Avenue, Moreno Valley, California (the "Premises").¹ A copy of the Lease is attached as Exhibit 1.

2. GBGC Family Golf Centers, Inc. ("Debtor") is the successor-in-interest to Golden Bear Golf Centers, Inc. and the tenant under the Lease.

¹ The Lease is contained on Exhibit A to the Motion and identified as Site No. CA5.

3. The Lease grants the Debtor the right to use and occupy the non-residential real property and improvements on the Premises for a term of ten years. The Lease also grants the Debtor the right to use and possess the “Personal Property,” which is defined in section 1 of the Lease as

all fixtures, furniture, furnishings, fittings, equipment, machinery, apparatus, signage, appliances, draperies, carpeting and other articles of personal property owned by Landlord now located on the Premises and used or useable in connection with any part of the Premises or the Improvements . . .

The Lease further defines Personal Property as including, but not limited to “practice golf balls, rental golf clubs and related equipment . . . and any such personal property which may hereafter be acquired by Tenant and used, installed or placed on the Premises by Tenant pursuant to the terms of this Lease.”

4. The Lease provides, in section 8, that “[u]pon the expiration of the Term hereof, or upon any earlier termination of the Term hereof or of Tenant’s right to possession, Tenant shall surrender the Premises, the Improvements and the Personal Property in at least as good condition as at the date hereof” Section 8 further provides that “Tenant acknowledges that it has no right to remove any Improvements or Personal Property upon the expiration of the Term hereof, or upon any earlier termination of the Term hereof.”

5. Sections 1 and 8 of the Lease unambiguously provide that all personal property existing at the time the Lease was executed is Highlander’s property, and that all personal property subsequently acquired by the tenant become Highlander’s property upon the termination of the Lease, either at the end of its stated term or sooner.

CONDITIONAL OBJECTION TO THE MOTION

6. Highlander is not opposed to the Debtors’ efforts to locate a potential assignee for the Lease. Indeed, Highlander favors the assumption and assignment of the Lease (including the

real property, improvements, and Personal Property (as defined in the Lease)), to a third party. Highlander does, however, reserve the right to object to any such assumption and assignment if the elements of 11 U.S.C. §365(b)(1) are not satisfied.

7. To the extent the Debtor seeks to sell any of the Personal Property through the Motion, Highlander objects to such sale. The Lease unambiguously provides that all personal property existing at the time the Lease was executed is Highlander's property, and that all subsequently acquired personal property becomes Highlander's property at lease termination, whether that occurs at the end of the stated term or before. This means that the personal property located at the Premises must remain with the real property. If the Debtor assumes the Lease and assigns it to a third-party, it must assume and assign *both* the real property and the personal property. If the Debtor rejects the Lease, it must surrender *both* the real property and the personal property to Highlander. Highlander objects to any attempt by the Debtor to do otherwise.

Dated: Dallas, Texas
July 28, 2000

HUGHES & LUCE, L.L.P.
Co-Counsel to Highlander Towngate, Ltd.

By: /S/
James H. Billingsley
Texas State Bar No. 00787084

1717 Main Street
2800 Bank One Center
Dallas, Texas 75201
(212) 885-5500

-and-

BLANK ROME TENZER GREENBLATT, LLP
Co-Counsel to Highlander Towngate, Ltd.
405 Lexington Avenue
New York,, NY 10174
(212) 885-5000

**ATTORNEYS FOR HIGHLANDER
TOWNGATE, LTD.**